

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
Assigned on Briefs January 11, 2008

**IN RE M.C.B., S.J.L.L., & T.J.L.**

**Appeal from the Juvenile Court for Knox County  
No. 5088 Timothy E. Irwin, Judge**

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**No. E2007-01736-COA-R3-PT - FILED APRIL 9, 2008**

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In this parental termination case, the trial court, upon petition of the Department of Children's Services ("DCS"), terminated Mother's rights to her three children upon a determination that Mother had failed to substantially comply with requirements of her permanency plans, that conditions that led to the children's removal from the home still persisted, and that termination was in the best interest of the children. On appeal, Mother argues that the proof was insufficient to support the juvenile court's decision and that DCS did not make reasonable efforts to reunite Mother and the children. We hold that the evidence does not preponderate against the juvenile court's finding that there was clear and convincing evidence of at least one statutory ground for termination of Mother's parental rights, that termination of Mother's parental rights was in the children's best interest, and that DCS made reasonable efforts to reunite Mother and the children. Accordingly, we affirm the judgment of the juvenile court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed; Cause Remanded**

SHARON G. LEE, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Victoria H. Bowling, Norris, Tennessee, for the appellant, S.J.B.

Robert E. Cooper, Jr., Attorney General and Reporter, and Amy T. McConnell, Assistant Attorney General, Nashville, Tennessee, for the Appellee, State of Tennessee, Department of Children's Services.

## OPINION

### *I. Background*

In this appeal, we address the termination of parental rights of S.J.B. (“Mother”)<sup>1</sup> to her three children<sup>2</sup> - S.J.L.L., T.J.L., and M.C.B., whose respective ages at the time of their removal from Mother’s custody were 14, 13, and 8. These children came to the attention of the Department of Children’s Services (“DCS”) in late February of 2005 after Mother failed to appear at a court hearing to address their truancy from school. A guardian ad litem was appointed for the children, and on March 4, 2005, upon oral motion of the guardian ad litem and DCS, the juvenile court referee issued a bench order placing the children in the temporary custody of DCS, upon a finding that Mother was not providing for the children’s “medical needs,” “educational needs,” and “general needs and safety.” After a further final hearing on May 12, 2005, an agreed order was entered decreeing the children to be dependent and neglected and placing them in temporary custody of DCS, upon a finding that it was reasonable to make no effort to maintain the children in Mother’s home and upon the following additional findings:

[T]he Court finds by clear and convincing evidence that the minor children named above are dependent and neglected children because of the mother’s substance abuse issues; physical abuse of the minor child, [T.J.L.], when this child was to have been under the mother’s care and supervision; and the mother’s neglect of her legal responsibility to ensure her children’s regular school attendance.

Such order allowed Mother supervised visitation with the children contingent upon her having a clean drug screen prior to each visit.

Initial permanency plans for Mother and the children were staffed on March 21, 2005, and approved by order entered July 8, 2005, *nunc pro tunc* to May 12, 2005. These plans stated a goal of reunification and to that end, required that Mother be alcohol and drug free and that she undergo alcohol/drug assessment, comply with follow-up recommendations, and submit to random drug screens. The plans also required that Mother demonstrate an ability to supervise the children, participate in mental health intake, and comply with any follow-up recommendations and finally, that she obtain stable housing, income, and transportation. The plans continued the requirement that Mother show a clean drug screen before she would be allowed visitation with her children.

A second set of plans was staffed on March 16, 2006. These second plans were approved as revised by the juvenile court. Such plans noted that “the children have been in custody for one year and limited progress has been made” and contained the stated goals of reunification or adoption.

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<sup>1</sup> All three children were born out of wedlock, and it appears that the identity of their biological fathers has not been confirmed. No biological father of any of the children is a party to this appeal.

<sup>2</sup> The record shows that Mother has a fourth child who is not a minor.

These plans included requirements that Mother be alcohol/drug free, that she complete a new substance abuse assessment by April 12, 2006, enter recommended substance abuse treatment within two weeks of receiving assessment results, actively participate in and successfully complete all recommended treatment, submit to random drug screens, begin drug treatment with Bradford Health Services (“Bradford”) by April 1, 2006, and continue with such treatment as prescribed by Bradford and also comply with follow-up and after care as recommended. Inter alia, the plans further required that Mother maintain stable housing and a legal source of income adequate to meet her children’s needs, demonstrate appropriate parenting skills for her children, and have her mental health needs diagnosed and treated by completing a mental health assessment and participating in recommended therapies or medication.

On September 1, 2006, DCS filed a petition to terminate Mother’s parental rights to her three children upon grounds, inter alia, that termination was in the best interest of her children, that she had failed to substantially comply with responsibilities set forth in her permanency plans, and that she had failed to remedy conditions that led to the children’s removal from her home and there was little likelihood that these conditions would be remedied at an early date.

Hearings on the petition to terminate Mother’s parental rights were held on multiple dates from February to the latter part of June, 2007, after which, by order entered July 20, 2007, the juvenile court decreed that Mother’s parental rights to S.J.L.L., T.J.L., and M.C.B. be terminated. The juvenile court’s decision to terminate was, in large part, based upon a finding that there was clear and convincing evidence that Mother continued to abuse drugs after the initial removal of the children from her custody and as a consequence, she was in substantial noncompliance with a requirement of her permanency plan and had failed to remedy a condition that led to the children’s removal. The order also reflects a finding of clear and convincing evidence that it is in the best interest of the children that Mother’s rights be terminated. Mother appeals this order.

## ***II. Issues Presented***

We address the following issues:

- 1) Whether there was clear and convincing evidence of statutory grounds for termination of Mother’s parental rights.
- 2) Whether DCS made reasonable efforts to reunite Mother with her children.
- 3) Whether there was clear and convincing evidence that termination was in the children’s best interest.

### *III. Analysis*

#### *A. Standard of Review*

A biological parent's right to the care and custody of his or her child is among the oldest of the judicially recognized liberty interests protected by the due process clauses of the federal and state constitutions. *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *Hawk v. Hawk*, 855 S.W.2d 573, 578-79 (Tenn. 1993); *Ray v. Ray*, 83 S.W.3d 726, 731 (Tenn. Ct. App. 2001). Although this right is fundamental and superior to claims of other persons and the government, it is not absolute. *State v. C.H.K.*, 154 S.W.3d 586, 589 (Tenn. Ct. App. 2004). This right continues without interruption only as long as a parent has not relinquished it, abandoned it, or engaged in conduct requiring its limitation or termination. *Blair v. Badenhope*, 77 S.W.3d 137, 141 (Tenn. 2002). Although "parents have a fundamental right to the care, custody, and control of their children," this right is not absolute and parental rights may be terminated if there is clear and convincing evidence justifying such termination under the applicable statute. *In re Drinnon*, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988) (citing *Stanley v. Illinois*, 405 U.S. 645 (1972)).

Terminating parental rights has the legal effect of reducing the parent to the role of a complete stranger, "severing forever all legal rights and obligations of the parent." Tenn. Code Ann. § 36-1-113(l)(1). The United States Supreme Court has recognized the unique nature of proceedings to terminate parental rights, stating that "[f]ew consequences of judicial action are so grave as the severance of natural family ties." *M.L.B. v. S.L.J.*, 519 U.S. 102, 119 (1996) (quoting *Santosky v. Kramer*, 455 U.S. 745, 787 (1982) (Rehnquist, J., dissenting)). As a result, "[t]he interest of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment." *Id.* The constitutional protections of the parent-child relationship require certain safeguards before the relationship can be severed. *O'Daniel v. Messier*, 905 S.W.2d 182, 186 (Tenn. Ct. App. 1995). This most drastic interference with a parent's rights requires "the opportunity for an individualized determination that a parent is either unfit or will cause substantial harm to his or her child before the fundamental right to the care and custody of the child can be taken away." *In re Swanson*, 2 S.W.3d 180, 188 (Tenn. 1999).

Termination proceedings are governed by statute in Tennessee. Parties who have standing to seek the termination of a biological parent's parental rights must first prove at least one of the statutory grounds for termination. Tenn. Code Ann. § 36-1-113(c)(1). Secondly, they must prove that termination of the parent's rights is in the child's best interest. Tenn. Code Ann. § 36-1-113(c)(2). Because the decision to terminate parental rights has profound consequences, courts must apply a higher standard of proof in deciding termination cases. Therefore, to justify termination of parental rights, the party seeking termination must prove by clear and convincing evidence the ground (or grounds) for termination and that termination is in the child's best interest. Tenn. Code Ann. § 36-1-113(c); *In re Adoption of A.M.H.*, 215 S.W.3d 793, 808 (Tenn. 2007); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002).

The heightened burden of proof in parental termination cases minimizes the risk of erroneous

decisions. *In re C.W.W.*, 37 S.W.3d 467, 474 (Tenn. Ct. App. 2000); *In re M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). Evidence satisfying the clear and convincing evidence standard establishes that the truth of the facts asserted is highly probable, *State v. Demarr*, No. M2002-02603-COA-R3-JV, 2003 WL 21946726, at \*9 (Tenn. Ct. App. M.S., Aug. 13, 2003), and eliminates any serious or substantial doubt about the correctness of the conclusions drawn from the evidence. *In re Valentine*, 79 S.W.3d at 546; *In re S.M.*, 149 S.W.3d at 639; *In re J.J.C.*, 148 S.W.3d 919, 925 (Tenn. Ct. App. 2004). It produces in a fact-finder's mind a firm belief or conviction regarding the truth of the facts sought to be established. *In re A.D.A.*, 84 S.W.3d 592, 596 (Tenn. Ct. App. 2002); *Ray*, 83 S.W.3d at 733; *In re C.W.W.*, 37 S.W.3d at 474.

In a non-jury case such as this one, we review the record *de novo* with a presumption of correctness as to the trial court's determination of facts, and we must honor those findings unless the evidence preponderates to the contrary. Tenn. R. App. P. 13(d); *Union Carbide v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993). When a trial court has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, considerable deference must be accorded to either as to the trial court's factual findings. *Seals v. England/Corsair Upholstery Mfg. Co., Inc.*, 984 S.W.2d 912, 915 (Tenn. 1999). The trial court's specific findings of fact are first reviewed and are presumed to be correct unless the evidence preponderates against them. We then determine whether the facts, as found by the trial court or as supported by the preponderance of the evidence, clearly and convincingly establish the grounds for terminating the biological parent's parental rights. *In re S.M.*, 149 S.W.3d 632, 640 (Tenn. Ct. App. 2004). The trial court's conclusions of law are reviewed *de novo* and are accorded no presumption of correctness. *Campbell v. Florida Steel Corp.*, 919 S.W.2d 26, 35 (Tenn. 1996); *Presley v. Bennett*, 860 S.W.2d 857, 859 (Tenn. 1993).

### ***B. Substantial Noncompliance with Permanency Plan***

The first issue we address is whether there was clear and convincing evidence before the trial court to support its finding of a statutory ground for terminating Mother's parental rights. Tennessee Code Annotated § 36-1-113(g) sets forth the various grounds upon which initiation of termination may be based, one of which is that "there has been substantial noncompliance by the parent or guardian with the responsibilities in a permanency plan or plan of care . . . ." Addressing termination of parental rights on this ground in *In re M.J.B.*, 140 S.W.3d 643 (Tenn. Ct. App. 2004), we observed that the plan requirements must be reasonable and related to resolving the problems that resulted in removal and that the parent's noncompliance must be substantial:

Terminating parental rights based on Tenn. Code Ann. § 36-1-113(g)(2) requires more proof than that a parent has not complied with every jot and tittle of the permanency plan. To succeed under Tenn. Code. Ann. § 36-1-113(g)(2), the Department must demonstrate first that the requirements of the permanency plan are reasonable and related to remedying the conditions that caused the

child to be removed from the parent's custody in the first place, *In re Valentine*, 79 S.W.3d at 547; *In re L.J.C.*, 124 S.W.3d 609, 621 (Tenn. Ct. App. 2003), and second that the parent's noncompliance is substantial in light of the degree of noncompliance and the importance of the particular requirement that has not been met. *In re Valentine*, 79 S.W.3d at 548-49; *In re Z.J.S.*, 2003 WL 21266854, at \*12 [Tenn. Ct. App. M.S., June 3, 2003) Trivial, minor, or technical deviations from a permanency plan's requirements will not be deemed to amount to substantial noncompliance. *In re Valentine*, 79 S.W.3d at 548; *Department of Children's Servs. v. C.L.*, No. M2001-02729-COA-R3-JV, 2003 WL 22037399, at \*18 (Tenn. Ct. App. [M.S.,] Aug. 29, 2003) (No Tenn. R. App. P. 11 application filed).

*In re M.J.B.* 140 S.W.3d at 656-57.

As we have noted, two sets of permanency plans were approved by the juvenile court in this case, and both sets included the requirement that Mother desist from the use of drugs, complete substance abuse assessment, and follow resulting drug treatment recommendations. We find that the purpose of these requirements was to create a safe and nurturing environment for her children, and accordingly, we conclude that the requirements were reasonable and directly related to eliminating the problems that led to the children's removal from the home. Mother presents no argument to the contrary. As described below, the record is replete with clear and convincing evidence showing that Mother failed to meet these requirements and that she used drugs on multiple occasions from the time the State was granted custody of her children in March of 2005 until well after the initial hearing on the petition to terminate her parental rights.

By her own admission, Mother has a long history of drug use and testified at the initial hearing on the petition to terminate that she had used drugs every day for twenty six years up until the time she entered the rehabilitation program at Bradford's shortly after her children were taken into state custody. In effect, Mother was using cocaine during the entire lives of all three of her children.

On April 19, 2005, shortly after her children were taken into state custody, Mother underwent initial assessment at Helen Ross McNabb Center, a mental health service in Knoxville. The record of that assessment shows that at that time Mother was using drugs and alcohol on a daily basis and, on the previous day, had used crack cocaine and consumed a twelve-pack of beer. Mother was referred for intensive outpatient treatment, but failed to attend. Thereafter, on July 21, 2005, Mother tested positive for cocaine.

Mother entered Bradford for substance abuse treatment on November 14, 2005, and completed the outpatient portion of such treatment on December 22, 2005. However, Mother did not participate in one year of after care or meet with a sponsor as she had been directed to do by

Bradford. Thereafter, by her own admission, Mother relapsed and resumed her use of drugs.

On June 23, 2006, after approval of the second set of permanency plans, Mother was admitted to another mental health service, AGAPE, Inc., for substance abuse treatment; however, she was discharged on August 30, 2006, for failure to follow that facility's rule that she maintain employment. In this regard, the record shows Mother had secured a job at a fast food restaurant earlier that month, but that she lost that job after a couple of weeks as the result of an altercation with a co-worker.

On September 7, 2006, upon referral of AGAPE, Inc., Mother entered the substance abuse treatment program at Sisters of the Rainbow. On the day of her admission to that program, Mother tested positive for cocaine. She also tested positive for cocaine on September 20 and 27 and October 7, upon which date she reported to her counselors that she had also used cocaine on September 24 and 25. Thereafter, on October, 20, 2006, Mother was discharged from Sisters of the Rainbow for "behavioral reasons" and failure to abide by her contract. The discharge summary includes the comment "[p]oor progress due to cl[ient] not completing [counseling] or any [counseling] objectives" and rates Mother's progress with respect to alcohol and drug issues as "poor."

After her discharge from Sisters of the Rainbow, Mother continued to use crack cocaine. Drug screens administered to her on December 18 and 28, 2006, and February 5 and 7, 2007 were all positive for cocaine.

On February 9, 2007, the first day of hearings on the petition to terminate her parental rights, Mother testified that the last time she had used drugs was approximately three weeks before; however, upon being administered a drug screen at the direction of the juvenile court, Mother tested positive for cocaine. Mother also confirmed that at the time of this hearing, she was living with her adult child, who also uses drugs. "Everybody knows, they done tested Greg, he smokes weed."

On February 13, 2007, Mother was admitted to the substance abuse treatment program operated by Knoxville Area Rescue Ministries ("KARM"). While it appears that for a period of time Mother was able to abstain from drug use as indicated by random drug screens, subsequently, she relapsed, and a drug screen administered on June 14, 2007, showed positive for cocaine.

This Court acknowledges the enormous effort required of a person seeking to overcome an addiction to cocaine after many years of consistent use. The Court further acknowledges that the record is not devoid of proof that Mother has made some sincere attempts in that regard since her three children were removed from her custody. Tragically, however, the record as a whole contains clear and convincing proof, that Mother's efforts have been inadequate, and it is our determination that the evidence does not preponderate against the juvenile court's ruling that, as a result of her inability to maintain sobriety and participate successfully in a substance abuse program, Mother has substantially failed to comply with requirements of her permanency plans.

### ***C. Persistent Conditions***

As noted, the juvenile court also found a ground for termination of Mother's parental rights by reason of the persistence of a condition that led to the children's removal from the home pursuant to Tenn. Code Ann. § 36-1-113(g)(3) which provides that parental rights may be terminated under the following circumstances:

(3) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:

(A) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;

(B) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and

(C) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home.

The children in this case had been removed from the home for a period of six months at the time DCS filed its petition to terminate parental rights, and as already outlined in this proceeding, conditions that led to the children's removal (Mother's substance abuse) persisted; there was little likelihood these conditions would be remedied at an early date given Mother's history of relapse; testimony of addiction specialist Regina Robertson that Mother's future prognosis is "poor;" and it is "highly unlikely" that she will refrain from the use of drugs. Accordingly, we agree with the conclusion of the juvenile court that clear and convincing evidence presented in this case also supports termination of Mother's parental rights under Tenn. Code Ann. § 36-1-113(g)(3).

### ***D. Reasonable Efforts of DCS***

Mother next argues that the juvenile court's order terminating her rights should be reversed because DCS failed to comply with Tenn. Code Ann. § 37-1-166, which provides that DCS must make "reasonable efforts" to "[m]ake it possible for the child to return home." We disagree.

In *In re Georgiana*, 205 S.W.3d 508 (Tenn. Ct. App. 2006), we restated the standard to which DCS is held in endeavoring to reunite the family after removal of a child from the home:

While the Department's reunification efforts need not be "herculean," the Department must do more than simply provide the parents with a list of services and send them on their way. The Department's employees must use their superior insight and training to assist the



parents in addressing and completing the tasks identified in the permanency plan . . . . [T]he Department's reunification efforts are "reasonable" if the Department has exercised "reasonable care and diligence . . . to provide services related to meeting the needs of the child and family." Tenn. Code Ann. § 37-1-166(g)(1) (2005). The reasonableness of the Department's efforts depends upon the circumstances of the particular case. The factors that courts use to determine the reasonableness of the Department's efforts include: (1) the reasons for separating the parent from his or her children, (2) the parent's physical and mental abilities, (3) the resources available to the parent, (4) the parent's efforts to remedy the conditions that required the removal of the children, (5) the resources available to the Department, (6) the duration and extent of the parent's remedial efforts, and (7) the closeness of the fit between the conditions that led to the initial removal of the children, the requirements of the permanency plan, and the Department's efforts.

The Department does not have the sole obligation to remedy the conditions that required the removal of children from their parents' custody. When reunification of the family is a goal, the parents share responsibility for addressing these conditions as well. Thus, parents desiring the return of their children must also make reasonable and appropriate efforts to rehabilitate themselves and to remedy the conditions that required the Department to remove their children from their custody.

*Id.* at 519 (citations omitted).

Applying this standard to the instant matter and upon our careful review of the record, we hold that the evidence does not preponderate against the conclusion that DCS made reasonable efforts to reunite Mother and her children. In this respect, shortly after the children were removed from Mother's custody, DCS referred Mother to Helen Ross McNabb for a psychological evaluation and treatment recommendations. At the staffing of the second set of permanency plans, DCS case manager Bonnie Allen requested that Mother be allowed visitation with her children even if Mother's drug screens were positive and that change was subsequently implemented by the juvenile court. Ms. Allen testified "I wanted [Mother] to be able to visit with her children, as long as she could function adequately." In March of 2006, Ms. Allen arranged for visitation between Mother and her children by enlisting the assistance of Robin Perry Witherspoon with Preservation Services. Given the fact that Mother was homeless at the time, Ms. Witherspoon facilitated visitation in public places, such as the mall and the park, and Ms. Allen attested that she and Ms. Witherspoon discussed Mother's progress on a weekly basis until visitation ended as a result of a shouting match that ensued between Mother and Dana Littlejohn, an acquaintance of Mother's that she encountered when one of these visitations was being held at a movie theater. Ms. Allen further testified that in order "to

have [Mother] become more independent so she [could] take care of her own needs and therefore take care of her children's needs," she provided Mother with ten bus tickets in April of 1996 and informed Mother that when those were gone she would provide more, but that Mother advised her that she would not use the tickets. It is further undisputed that at or around the time Mother entered the treatment program at AGAPE in June of 2006, Ms. Allen provided Mother with a directory of treatment options and advised her that treatment was also available to her at a treatment program called Women of the Well.

On November 22, 2006, DCS employee Jennifer Weaver succeeded Ms. Allen as Mother's case manager. Ms. Weaver testified that on many occasions after she was appointed as Mother's case manager she supervised visitation between Mother and her children and met with Mother and discussed "housing, her drug treatment, mental health intake, and all the things she needed to do in order to get her kids back." In December of 2006, Ms. Weaver also went over the petition to terminate parental rights with Mother. "I went over every detail of why they filed - - all the reasons why and what she hasn't done and what she still needed to do before the court date on February the 9th." Ms. Weaver talked to Mother about getting into KARM's drug treatment program and offered to assist her in that regard, but her assistance was declined by Mother who responded that she already knew how to get into KARM. Thereafter, Ms. Weaver took Mother to Cherokee Health Systems to enter her into a mental health treatment program. Upon being advised by Mother that she did not have proof of identity, which was a prerequisite to obtaining employment and housing,<sup>3</sup> Ms. Weaver assisted Mother by helping her obtain a copy of her birth certificate. "I called vital records, I got a referral for funding from DCS in order to pay for her birth certificate." Mother testified that Ms. Warner "has helped me a lot with trying to get my ID together."

In sum, we conclude that there is ample evidence in the record to show that DCS fulfilled its statutory obligation by making reasonable efforts to reunite Mother and her children. Mother simply failed to avail herself of the opportunities made available to her. Mother's argument to the contrary is without merit.

### ***E. Best Interest***

In addition to finding by clear and convincing evidence that at least one statutory ground exists to terminate parental rights, the court must also find that the termination is in the child's best interest. Tenn. Code Ann. § 36-1-113(c)(2). In making a determination of best interest, the court shall consider, but is not limited to, the following:

- (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
- (2) Whether the parent or guardian has failed to effect a lasting

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<sup>3</sup>Mother's driver's license was suspended for nonpayment of outstanding tickets.

adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;

(3) Whether the parent or guardian has maintained regular visitation or other contact with the child;

(4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;

(5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;

(6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;

(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

Tenn. Code Ann. § 36-1-113(i). Further, as this court stated in *In re Audrey S.*,

[A]scertaining a child's best interests in a termination proceeding is a fact-intensive inquiry requiring the courts to weigh the evidence regarding the statutory factors, as well as any other relevant factors, to determine whether irrevocably severing the relationship between the parent and the child is in the child's best interests.

. . .

Ascertaining a child's best interests does not call for a rote examination of each of Tenn. Code Ann. § 36-1-113(i)'s nine factors and then a determination of whether the sum of the factors tips in favor of or against the parent. The relevancy and weight to be given each factor depends on the unique facts of each case. Thus, depending upon the circumstances of a particular child and a particular parent, the consideration of one factor may very well dictate the outcome of the analysis.

*In re Audrey S.*, 182 S.W.3d at 878 (citations omitted).

Several factors in the instant case warrant a finding that termination of Mother's parental rights is in the best interest of her children. As we have discussed, the record shows that Mother continued to abuse drugs during the pendency of her permanency plans and has tested positive for cocaine on multiple occasions. She has thereby 1) failed to make an adjustment of conduct as to make it safe and in her children's best interests to be in her home; 2) failed to make a lasting adjustment despite reasonable efforts by DCS; and 3) demonstrated a use of drugs as may render her unable to care for her children. In addition to these shortcomings of Mother, we agree with the finding of the juvenile court that in the care of their foster parents, the children have found safe, secure, and loving homes to which they are entitled.

In her appeal of the juvenile court's decision, Mother does not contend that termination of her parental rights is not in the best interest of her children, and upon our careful review of the record, it is our determination that the juvenile court's ruling in that regard is well supported and should be affirmed.

#### ***IV. Conclusion***

For the foregoing reasons, we affirm the judgment of the juvenile court. Costs of appeal are assessed to the appellant, S.J.B.

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SHARON G. LEE, JUDGE